



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

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**SEP 18 2017**

RE: MUR 7275 (AR 17-03)  
Conservative Campaign Committee  
and Kelly Lawler in her official  
capacity as treasurer

Dear Ms. Mitchell:

In the normal course of carrying out its supervisory responsibilities, the Federal Election Commission (the "Commission") became aware of information suggesting that Conservative Campaign Committee and Kelly Lawler in her official capacity as treasurer (the "Committee"), may have violated the Federal Election Campaign Act of 1971, as amended (the "Act"). On February 23, 2017, the Commission notified the Committee that it was being referred to the Commission's Office of General Counsel for possible enforcement action under 52 U.S.C. § 30109. On September 12, 2017, the Commission found reason to believe that the Committee violated 52 U.S.C. §§ 30104(b)(4)(H)(iii) and (g), provisions of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is enclosed for your information.

In order to expedite the resolution of this matter, the Commission has authorized the Office of the General Counsel to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Pre-probable cause conciliation is not mandated by the Act or the Commission's regulations, but is a voluntary step in the enforcement process that the Commission is offering to your clients as a way to resolve this matter at an early stage and without the need for briefing the issue of whether or not the Commission should find probable cause to believe that your clients violated the law. Enclosed is a conciliation agreement for your clients' consideration.

Please note that you and your clients have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified in writing that the Commission has closed its file in this matter. *See* 18 U.S.C. § 1519.

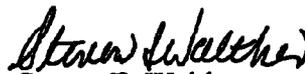
If your clients are interested in engaging in pre-probable cause conciliation, please contact Derek Ross, the attorney assigned to this matter, at (202) 694-1579, or (800) 424-9530, or [dross@fec.gov](mailto:dross@fec.gov), within seven days of receipt of this letter. During conciliation, you and your clients may submit any factual or legal materials that you believe are relevant to the resolution of this matter. Because the Commission only enters into pre-probable cause conciliation in matters that it believes have a reasonable opportunity for settlement, the Commission may proceed to the next step in the enforcement process if a mutually acceptable conciliation agreement cannot be reached within sixty days. *See* 52 U.S.C. § 30109(a), 11 C.F.R. Part 111 (Subpart A). Conversely, if your clients are not interested in pre-probable cause conciliation, the Commission may conduct formal discovery in this matter or proceed to the next step in the enforcement process. Please note that once the Commission enters the next step in the enforcement process, it may decline to engage in further settlement discussions until after making a probable cause finding.

Pre-probable cause conciliation, extensions of time, and other enforcement procedures and options are discussed more comprehensively in the Commission's "Guidebook for Complainants and Respondents on the FEC Enforcement Process," which is available on the Commission's website at [http://www.fec.gov/em/respondent\\_guide.pdf](http://www.fec.gov/em/respondent_guide.pdf).

In the meantime, this matter will remain confidential in accordance with 52 U.S.C. §§ 30109(a)(4)(B) and 30109(a)(12)(A) unless you notify the Commission in writing that your clients wish the matter to be made public. Please be advised that, although the Commission cannot disclose information regarding an investigation to the public, it may share information on a confidential basis with other law enforcement agencies.<sup>1</sup>

We look forward to your response.

On behalf of the Commission,

  
Steven T. Walther  
Chairman

Enclosures  
Factual and Legal Analysis

<sup>1</sup> The Commission has the statutory authority to refer knowing and willful violations of the Act to the Department of Justice for potential criminal prosecution, 52 U.S.C. § 30109(a)(5)(C), and to report information regarding violations of law not within its jurisdiction to appropriate law enforcement authorities. *Id.* § 30107(a)(9).

1 **FEDERAL ELECTION COMMISSION**  
2 **FACTUAL AND LEGAL ANALYSIS**  
3

4 **RESPONDENTS:** Conservative Campaign Committee and  
5 Kelly Lawler in her official capacity  
6 as treasurer

AR 17-03

7 **I. INTRODUCTION**  
8

9 This matter arises from the Commission's audit of the 2012 election cycle activity of the  
10 Conservative Campaign Committee and Kelly Lawler in her official capacity as treasurer (the  
11 "Committee").<sup>1</sup> On October 24, 2016, the Commission approved the Final Audit Report and the  
12 Audit Division referred one finding to the Office of General Counsel ("OGC") for possible  
13 enforcement action: the Committee's failure to file 24-Hour and 48-Hour Reports for  
14 independent expenditures ("IEs") totaling \$286,286. For the reasons that follow, and based on  
15 the facts, analysis, and findings set forth in the Final Audit Report, which is herein incorporated  
16 by reference, the Commission finds reason to believe that the Committee violated 52 U.S.C.  
17 § 30104(b)(4)(H)(iii) and (g) by failing to file 24-Hour and 48-Hour Reports of independent  
18 expenditures.

19 **II. FACTUAL AND LEGAL ANALYSIS**

20 **A. Reporting of Independent Expenditures**

21 The Federal Election Campaign Act of 1971, as amended (the "Act"), requires committee  
22 treasurers to file reports of disbursements in accordance with the provisions of 52 U.S.C.  
23 § 30104(b).<sup>2</sup> This requirement includes reporting independent expenditures ("IEs") made by  
24 political committees other than authorized committees.<sup>3</sup> Every political committee that makes  
25 IEs must report them in its regularly scheduled disclosure reports in accordance with 11 C.F.R.

<sup>1</sup> See Attach. 1, Final Audit Report.

<sup>2</sup> 52 U.S.C. § 30104(a)(1).

<sup>3</sup> 52 U.S.C. § 30104(b)(4)(H)(iii), *see also* 11 C.F.R. §§ 100.16(a), 100.22, 104.3(b)(1)(vii).

1 § 104.3(b)(3)(vii).<sup>4</sup> In addition, political committees that make IEs aggregating \$1,000 or more  
2 with respect to a given election after the 20th day, but more than 24 hours before the date of that  
3 election, must disclose them within 24 hours following the date of dissemination.<sup>5</sup> These  
4 reports, known as 24-Hour Reports, must be filed within 24 hours after each time it makes or  
5 contracts to make IEs aggregating an additional \$1,000.<sup>6</sup>

6 A political committee that makes or contracts to make IEs aggregating \$10,000 or more  
7 for an election in any calendar year, up to and including the 20th day before an election, must  
8 report these expenditures within 48 hours.<sup>7</sup> These reports, known as 48-Hour Reports, must be  
9 filed by the end of the second day “following the date on which a communication that constitutes  
10 an independent expenditure is publicly distributed or otherwise publicly disseminated.”<sup>8</sup>

11 During the 2012 election cycle, the Committee disclosed \$1,339,170 as IEs on its reports,  
12 but failed to file 24-Hour or 48-Hour Reports for \$12,302 of those IEs in a timely manner and  
13 did not file any reports for IEs totaling \$3,774.<sup>9</sup> The Committee also reported \$294,036 of  
14 apparent IEs as operating expenditures or other disbursements on its quarterly reports, but failed  
15 to file 24-Hour or 48-Hour Reports for \$270,210.<sup>10</sup> The apparent IEs reviewed by the Audit

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<sup>4</sup> 11 C.F.R. § 104.4(a). Such a political committee must disclose on Schedule E the name of any person who receives any disbursement during the reporting period in an aggregate amount or value in excess of \$200 within the calendar year in connection with an IE by the reporting committee. The report also must disclose the date, amount, and purpose of any such IE and include a statement that indicates whether such IE is in support of or in opposition to a candidate, as well as the name and office sought by such candidate. IEs of \$200 or less do not need to be itemized, though the committee must report the total of those expenditures on line (b) of Schedule E. *Id.*, see also 11 C.F.R. § 104.3(b)(3)(vii).

<sup>5</sup> 52 U.S.C. § 30104(g)(1); 11 C.F.R. § 104.4(c).

<sup>6</sup> 11 C.F.R. § 104.4(c).

<sup>7</sup> 52 U.S.C. § 30104(g)(2); 11 C.F.R. § 104.4(b)(2).

<sup>8</sup> 11 C.F.R. § 104.4(b)(2).

<sup>9</sup> Attach. 1, Final Audit Report at 9.

<sup>10</sup> *Id.*

1 Division were for television and radio advertisements and fundraising blast emails that contained  
2 language expressly advocating the election or defeat of a clearly identified federal candidate.  
3 The television and radio advertisements included statements such as “Defeat Obama Tele-thon,”  
4 “Defeat Obama Radio-thon,” and “Rebuild America, Defeat Obama Tour.” The fundraising  
5 blast emails included links to the television and radio advertisements and express advocacy  
6 phrases in the text of the emails such as “Defeat Barack Obama” and “We’re going to stop  
7 Barack Obama from getting Wisconsin’s 10 Electoral Votes.”<sup>11</sup>

8 The Interim Audit Report recommended that the Committee provide documentation to  
9 show that the 24-Hour or 48-Hour Reports for the \$270,210 in apparent IEs were timely filed or  
10 not required.<sup>12</sup> The Committee did not submit a response to the Interim Audit Report. In  
11 response to the Draft Final Audit Report, the Committee stated that many of the communications  
12 that the Audit Division reviewed and identified as apparent IEs were actually fundraising  
13 communications that were not reportable as IEs, but the Audit Division concluded that the  
14 Committee did not support this assertion.<sup>13</sup>

15 The Commission approved a finding that the Committee did not file 24-Hour or 48-Hour  
16 Reports for \$3,774 in apparent IEs and \$270,210 in IEs that were reported as operating  
17 expenditures or other disbursements, and untimely filed 24-Hour or 48-Hour Reports for \$12,302  
18 in IEs reported on Schedule E.<sup>14</sup> The Audit Division referred these findings to OGC for possible  
19 enforcement action.

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<sup>11</sup> *Id.* at 7.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at 8.

<sup>14</sup> *Id.*

1 In its Response to the Notice of Referral,<sup>15</sup> the Committee asserted that the total IEs the  
2 Committee failed to disclose in 24-Hour or 48-Hour Reports is actually \$71,441.80.<sup>16</sup> The  
3 Committee also contends that two of its communications did not trigger the reporting  
4 requirement because they were less than the \$1,000 threshold.<sup>17</sup> The Committee also suggests  
5 that any reporting issue is *de minimis* because the approximately \$11,197 in IEs reported on 24-  
6 Hour Reports were filed between two and six days late and suggests, but does not describe,  
7 remedial measures were put in place to prevent future violations.<sup>18</sup> The Committee reiterated its  
8 argument that the bulk of the communications identified in the Final Audit Report were not  
9 “public communications” but were instead fundraising solicitations sent to its prior donors.<sup>19</sup>  
10 However, a review of these communications confirms that they should have been reported as  
11 independent expenditures. Accordingly, the Commission finds reason to believe that the  
12 Committee violated 52 U.S.C. § 30104(b)(4)(H)(iii) and (g) by failing to file 24-Hour and 48-  
13 Hour Reports for \$286,286 (\$3,744 + \$12,302 + \$270,210) in IEs.

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<sup>15</sup> Notice of Referral, AR 17-03 (Feb. 23, 2017).

<sup>16</sup> See Conservative Campaign Committee Resp. at 2 (May 22, 2017).

<sup>17</sup> *Id.* at 2-3. A review of the documents provided by the Committee supports the Audit Division finding that these expenditures triggered the 24-Hour or 48-Hour reporting requirement.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at 1-2. The Committee also argued that many its unreported expenditures were in support of Wisconsin Governor Scott Walker’s recall, and thus did not require reporting. However, as discussed in the Final Audit Report, those communications contained language expressly advocating the defeat of President Barack Obama in the text of the fundraising blast emails.